

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0047

Sales Tax

Calendar years 1994 & 1995, and, Fiscal year ending March 31, 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a sales tax assessment resulting from a Department audit conducted for the calendar years 1994 and 1995, plus, the fiscal year ending March 31, 1996.

The taxpayer is a pager company. The company rents and sells a variety of pagers. The taxpayer also sells airtime to customers. In addition to the basic services of pager rental and airtime, the taxpayer also offers maintenance contracts and voice mail service. The taxpayer's domicile is located out of state. The taxpayer has several locations in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the penalty should be waived as the error was the result of an immaterial error which consisted of collecting and remitting sales tax from one central location as opposed to collecting and remitting sales tax from each sales location as deemed by the Indiana sales tax regulations.

The Department points out the tax assessed for the separate locations was basically "washed" with the refund from the central location. The tax assessed in the audit

basically resulted from the sale of air time and pager rental, plus, the use tax assessed on capital assets. These issues were issues in the previous audit, and, the taxpayer had not implemented a self-assessing use tax accrual system from the time of the previous audit.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer did not act with reasonable care in that the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.